



irs issues updated guidance for vehicle donations

MSK Client Alert

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We've all heard and read the radio and newspaper ads that encourage donors to contribute their vehicles to charity. The advertisements attempt to convince donors to donate their old "jalopies" (whether they run or not) and assert that, in addition to helping the charity, donors can claim an income tax charitable contribution deduction (equal to the vehicle's "full blue book value") and may even be able to "get cash back." It appears that sufficient people have found it difficult to resist these promotions because they haven't gone away.

Unfortunately, many of these ads paint too rosy a picture, which can result in disappointed donors.

Updated Guidance From the IRS.

To assist donors in understanding the rules that apply when a vehicle is donated to charity, the IRS recently issued an updated version of its Publication 4303, entitled "A Donor's Guide to Vehicle Donations," which seeks to provide some practical guidance to donors (and charities) where an automobile is being donated to charity.

The Publication is divided into several sections that provide information for donors. For example, there is a section to help donors confirm that the donee is really a charity, a section on how these types of deductions must be substantiated, and a section on properly transferring title of the vehicle from the donor to the charity.

Scope Out the Charity.

As a first step, the IRS advises every donor to ensure that the charity is really a "charity," i.e., an entity that is authorized to accept tax-deductible contributions. Before making a contribution, the IRS suggests that the donor do some homework and make sure that the IRS has, in fact, recognized the donee as a tax-exempt entity pursuant to Internal Revenue Code Section 501(c)(3). A donor can determine a charity's status by going to the following website and inserting

attorneys

Jeffrey D. Davine

practice areas

transactional tax



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the name of the charity: <http://apps.irs.gov/app/eos/>. If the purported charity isn't listed, there is a good chance that no deduction will be available.

Not Everyone Can Claim a Deduction.

Notwithstanding the fluff in some of the promotional material, Publication 4303 cautions that not every donor may claim a deduction for making a charitable contribution or claim an amount equal to the full fair market value of the vehicle. As a threshold matter, a donor must be able to itemize his or her deductions or a charitable contribution deduction may not be claimed. In addition, there are limits as to how much can be deducted in any year. In general, if a vehicle is donated to a public charity, the deduction will be limited to 50% of the donor's "contribution base" (essentially, adjusted gross income). Any unused deduction can be carried forward by the donor for up to five additional tax years.

Deduction Limitation.

The Publication provides that a donor must be sure that he or she isn't claiming a deduction for an amount that exceeds the vehicle's true fair market value. Fair market value is not necessarily the amount listed in an automobile pricing guide. Instead, it's the price that a willing buyer would pay and a willing seller would accept when neither party is compelled to buy or sell and both have reasonable knowledge of all relevant facts. This means that, if a car does not run or is otherwise not in proper working order, the pricing guide may not be an accurate indicator of value and a lesser amount may be deducted. Moreover, Publication 4303 states that the "fair market value of a vehicle cannot exceed the price listed for a private-party sale." This amount will normally be less than the "retail" price for the vehicle (but more than the dealer trade-in value).

In addition to the limiting the deduction to a vehicle's true fair market value, subject to certain exceptions, if the charity receiving the vehicle sells it to a third party, the donor's deduction will be limited to the gross proceeds that the charity receives. For example, assume that on November 1 a donor transfers a vehicle to charity and determines that its true fair market value is \$5,000. On November 20 the charity sells the car to an unrelated third party for \$4,500. Notwithstanding the fact that the vehicle's fair market value was \$5,000 on the date of the contribution, the donor's deduction is limited to \$4,500, i.e., the gross proceeds received by the charity.

In certain specific situations, a donor's deduction will not be limited to the gross proceeds that the charity receives from the sale of the vehicle. Instead the donor may claim a deduction for the vehicle's fair market value as of the date of its contribution. The "gross proceeds" limitation will not apply in the following situations:

- The contemporaneous written acknowledgment ("CWA") for the gift that the charity provides to the donor contains a statement certifying that the charity intends to make a significant intervening use of the vehicle, a detailed description of the intended use, the duration of the use, and a certification that the vehicle will not be sold before completion of the use.
- The CWA contains a statement certifying that the charity intends to make a material improvement to the vehicle, a detailed description of the intended improvement, and a certification that the vehicle will not be sold before completion of the improvement.



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- The CWA contains a statement certifying that the charity intends to give or sell the vehicle to a needy individual at a price that is significantly below its fair market value and that the gift/sale is in direct furtherance of the charity's charitable purposes of relieving the poor and distressed or the underprivileged who are in need of a means of transportation. This exception will not apply if the charity simply gives the proceeds from the sale of the vehicle to a needy individual for any charitable purpose.
- A special rule applies if the CWA indicates that the donated vehicle sold for \$500 or less. In that case, the donor may claim a deduction for the lesser of the vehicle's fair market value as of the date of the contribution or \$500.

Substantiating the Deduction.

Publication 4303 reminds donors that the CWA must be obtained if the deduction being claimed is at least \$250. The specific information that is required to be included in the CWA varies depending on the amount of the claimed deduction and whether the charity sells the vehicle after it is donated.

For example, every CWA where the deduction being claimed is at least \$250 must include the name of the charity, a description of the vehicle, and one of the following: (i) a statement that no goods or services were provided by the charity to the donor in return for the contribution (if that's correct); (ii) a description and good-faith estimate of the value of any goods or services provided by the charity; or (iii) a statement that provides that any goods or services provided by the charity in return for the contribution consisted only of intangible religious benefits (if that's correct). If the deduction being claimed exceeds \$500, it must contain certain additional information. In addition, if the charity sells the vehicle, the CWA must include the following information: (i) a statement certifying that the vehicle was sold in an arm's-length transaction between unrelated parties; (ii) the date of the sale; (iii) the gross proceeds received by the charity from the sale; and (iv) a statement informing the donor that the deduction that he/she claims cannot exceed the gross proceeds received by the charity from its sale.

Filing/Reporting Requirements.

If a donor is claiming a deduction for more than \$500, the donor must attach a copy of the CWA to his/her tax return.

If a deduction of more than \$500 but not more than \$5,000 is being claimed, the donor must complete Section A of IRS Form 8283 (Noncash Charitable Contributions) and attach it to his/her tax return.

If a deduction of more than \$5,000 is being claimed, the donor must complete Section B of Form 8283 (which must be signed by an authorized officer or employee of the charity) and attach it to his/her return. In addition, if the deduction being claimed exceeds \$5,000 and is not subject to the "gross proceeds" limitation explained above (e.g., because the charity doesn't sell the vehicle), the donor must obtain a written appraisal of the vehicle. The written appraisal must be made not more than 60 days prior to the vehicle's donation and it must be received by the donor before the due date (including extensions) of the return on which the deduction is initially claimed. If the deduction is initially claimed on an amended return, the appraisal must be received by the donor



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before the date that the amended return is filed.

Transferring Title to Charity.

Publication 4303 suggests that the donor should ensure that title is properly transferred to the charity by notifying the appropriate state motor vehicle department. Charities will often take care of this ministerial task, but the IRS recommends that each donor check to make sure that it's done properly to ensure that he/she does not incur any future civil liability problems.

Do It the Right Way.

If a donor is considering contributing a vehicle to charity, it's not sufficient to rely on a 30 second radio advertisement to get all the relevant facts. Updated Publication 4303 is a good resource to ensure that this type of donation is done the right way and that the maximum deduction may be claimed.